



ORDINANCE NO. 28274

1 AN ORDINANCE relating to the Small Business Enterprise Program;
2 amending Chapter 1.07 of the Tacoma Municipal Code by amending
3 Sections 1.07.020, 1.07.050, and 1.07.140 thereof to add a new
4 definition, update the SBE Program certification process, and extend
5 the SBE Program through December 31, 2019.

6 WHEREAS, on December 15, 2009, pursuant to Ordinance No. 27867, the
7 Historically Underutilized Business ("HUB") Program was recodified under
8 Chapter 1.07 of the Tacoma Municipal Code ("TMC"), to expand the scope of the
9 Program beyond public works and improvements to include supplies and services
10 contracts, and to clarify application of Program requirements to all contracts valued
11 at \$25,000 or more, and

12 WHEREAS, in 2013, the HUB Program was renamed to the "Small
13 Business Enterprise ("SBE") Program, and

14 WHEREAS, as a result of the City's continuing effort to implement the intent
15 of the SBE Program, improve efficiency and fairness in Program administration,
16 and achieve Program goals, it is necessary to make amendments to Chapter 1.07,
17 TMC, and

18 WHEREAS, City staff is recommending the following proposed amendments
19 to Chapter 1.07, TMC: (1) Section 1.07.020, to add a definition for "Affidavit of
20 Small Business Enterprise Certification"; (2) Section 1.07.050, to (a) increase the
21 "Personal Net Worth" ceiling from \$375,000 to \$1,320,000, (b) increase the "Total
22 Gross Receipts" ceiling from \$8,000,000 to \$36,500,000 for construction/Public
23 Works, and from \$4,000,000 to \$15,000,000 for non-construction/non-Public Works,
24 (c) replace existing declaration and affidavit form references with a reference to the
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1 new Affidavit of Small Business Enterprise Certification, which contains expanded
2 certification and documentation requirements; and (d) remove inflexible
3 requirements for submission of tax return documentation; and (3) Section 1.07.140,
4 to extend the duration, and time for City Council review, of the SBE Program
5 through December 31, 2019; Now, Therefore,

6 BE IT ORDAINED BY THE CITY OF TACOMA:

7 That Chapter 1.07 of the Tacoma Municipal Code is hereby amended by
8 amending Sections 1.07.020, 1.07.050, and 1.07.140 thereof, as set forth in the
9 attached Exhibit "A."
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12 Passed _____

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14 _____
Mayor

15 Attest:

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17 _____
City Clerk

18 Approved as to form:

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20 _____
21 Deputy City Attorney
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EXHIBIT "A"

Chapter 1.07

SMALL BUSINESS ENTERPRISES

Sections:

- 1.07.010 Policy and purpose.
- 1.07.020 Definitions.
- 1.07.030 Discrimination prohibited.
- 1.07.040 Program administration.
- 1.07.050 Certification.
- 1.07.060 Program requirements.
- 1.07.070 Evaluation of submittals.
- 1.07.080 Contract compliance.
- 1.07.090 Program monitoring.
- 1.07.100 Enforcement.
- 1.07.110 Remedies.
- 1.07.120 Unlawful acts.
- 1.07.130 Severability.
- 1.07.140 Sunset and review of program.

* * *

1.07.020 Definitions.

Terms used in this chapter shall have the following meanings unless defined elsewhere in the Tacoma Municipal Code ("TMC"), or unless the context in which they are used clearly indicates a different meaning

A. "Affidavit of Small Business Enterprise Certification" means the fully completed, signed, and notarized affidavit that must be submitted with an application for SBE certification. Representations and certifications made by the applicant in this Affidavit are made under penalty of perjury and will be used and relied upon by City to verify SBE eligibility and compliance with SBE certification and documentation requirements.

A.B. "Base Bid" means a Bid for Public Works to be performed or Supplies or Services to be furnished under a City Contract, including additives, alternates, deductives, excluding force accounts, and taxes collected separately pursuant to Washington Administrative Code ("WAC") 458-20-171.

B.C. "Bid" means an offer submitted by a Respondent to furnish Supplies, Services, and/or Public Works in conformity with the Specifications and any other written terms and conditions included in a City request for such offer.

C.D. "Bidder" means an entity or individual who submits a Bid, Proposal or Quote. See also "Respondent."

D.E. "City" means all Departments, Divisions and agencies of the City of Tacoma.

E.F. "Contract" means any type of legally binding agreement regardless of form or title that governs the terms and conditions for procurement of Public Works and Improvements and/or Non-Public Works and Improvements Supplies and Services. Contracts include the terms and conditions found in Specifications, Bidder or Respondent Submittals, and purchase orders issued by the City. A "Contract" as used in this chapter shall include an agreement between the City and a non-profit entity to perform construction-related services for Public Works. A "Contract" does not include: (1) awards made by the City with federal/state grant or City general funds monies to a non-profit entity where the City offers assistance, guidance, or supervision on a project or program, and the recipient of the grant awards uses the grant moneys to provide services to the community; (2) sales transactions where the City sells its personal or real property; (3) a loan transaction where the City is acting as a debtor or a creditor; (4) lease, franchise; (5) agreements to use City real property (such as Licenses, Permits and Easements) and, (6) banking and other financial or investment services.



1 FG. "Contractor" means any Person that presents a Submittal to the City, enters into a Contract with the City, and/or performs all or any part of a Contract awarded by the City, for the provision of Public Works, or Non-Public Works and Improvements, Supplies or Services.

2 GH. "Evaluated Bid" means a Bid that factors each Respondent's Base Bid including any alternates, deductive and additives selected by the City that will result in a weighed reduction based on that
3 Respondent's percentage of SBE participation, as defined by formula set forth in this chapter or in the SBE Regulations adopted pursuant to this chapter.

4 HI. "Goals" means the annual level of participation by SBEs in City Contracts as established in this chapter, the SBE Regulations, or as necessary to comply with applicable federal and state nondiscrimination laws and
5 regulations. Goals for individual Contracts may be adjusted as provided for in this chapter and shall not be construed as a minimum for any particular Contract or for any particular geographical area.

6 IJ. "SBE Certified Business" (or "SBEs") means a business that meets the criteria set forth in
7 Section 1.07.050 of this chapter and has been certified as meeting that criteria by the Community and Economic Development Department-SBE Program Coordinator.

8 JK. "SBE Program Coordinator" means the individual appointed, from time to time, by the City's
Community and Economic Development Director to administer the SBE Regulations.

9 KL. "SBE Regulations" shall mean the written regulations and procedures adopted pursuant to this chapter
10 for procurement of Supplies, Services and Public Works.

11 LM. "Lowest and Best Responsible Bidder" means the Bidder submitting the lowest Bid received that is
12 within the range of acceptable bids, that also has the ability to timely perform the Contract bid upon considering such factors as financial resources, skills, quality of materials, past work record, and ability to comply with state, federal, and local requirements, including those set forth in the SBE Regulations.

13 MN. "Non-Public Works and Improvements" means all competitively solicited procurement of Supplies
and/or Services by the City not solicited as Public Works.

14 NO. "Person" means individuals, companies, corporations, partnerships, associations, cooperatives, any other
legally recognized business entity, legal representative, trustee, or receivers.

15 OP. "Proposal" means a written offer to furnish Supplies or Services in response to a Request for Proposals.
16 This term may be further defined in the Purchasing Policy Manual and/or in competitive solicitations issued by the City.

17 PQ. "Public Works (or "Public Works and Improvements)" means all work, construction, alteration, repair, or
18 improvement other than ordinary maintenance, executed at the cost of the City, or that is by law a lien or charge on any property therein. This term includes all Supplies, materials, tools, and equipment to be furnished in accordance with the Contract for such work, construction, alteration, repair, or improvement.

19 QR. "Quote" means a competitively solicited written offer to furnish Supplies or Services by a method of
20 procurement that is less formalized than a Bid or a Proposal. This term may be further defined in the Purchasing Policy Manual.

21 RS. "Respondent" means any entity or Person, other than a City employee, that provides a Submittal in
22 response to a request for Bids, Request for Proposals, Request for Qualifications, request for quotes or other request for information, as such terms are defined in Section 1.06.251 TMC. This term includes any such
23 entity or Person whether designated as a supplier, seller, vendor, proposer, Bidder, Contractor, consultant, merchant, or service provider that; (1) assumes a contractual responsibility to the City for provision of
24 Supplies, Services, and/or Public Works; (2) is recognized by its industry as a provider of such Supplies, Services, and/or Public works; (3) has facilities similar to those commonly used by Persons engaged in the
25 same or similar business; and/or (4) distributes, delivers, sells, or services a product or performs a Commercially Useful Function.

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1 ST. "Services" means non-Public Works and Improvements services and includes professional services,
2 personal services, and purchased services, as such terms are defined in Section 1.06.251 TMC and/or the
3 City's Purchasing Policy Manual.

4 TU. "Submittal" means Bids, Proposals, Quotes, qualifications or other information submitted in response to
5 requests for Bids, Requests for Proposals, Requests for Qualifications, requests for Quotations, or other City
6 requests for information, as such terms are defined in Section 1.06.251 TMC.

7 UV. "Supplies" means materials, Supplies, and other products that are procured by the City through a
8 competitive process for either Public Works procurement or Non-Public Works and Improvements
9 procurement unless an approved waiver has been granted by the appropriate authority.

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11 **1.07.050 Certification.**

12 A. The SBE Program Coordinator shall approve a person as a SBE Certified Business if all of the following
13 criteria are satisfied:

14 1. Each person with an ownership interest in the company has a personal net worth of less than
15 ~~\$750,000~~ 1,320,000 excluding one personal residence and the net worth of the business;

16 2. The company's total gross receipts for any consecutive three year period within the last six years is not
17 more than ~~\$8,000,000~~ 36,500,000 for public works companies and not more than ~~\$400,000~~ 15,000,000 for
18 non-public works and improvements companies;

19 3. The owner(s) of the company executes an Affidavit of Small Business Enterprise Certification and files it
20 with the City which states that all information submitted on the SBE application is accurate, that the business
21 has sought or intends to do business with the City and/or within the Pierce County area and has experienced
22 or expects to experience difficulty competing for such business due to financial limitations that impair its
23 ability to compete against larger firms; and

24 4. The company can demonstrate that it also meets at least one of the following additional requirements:

25 a. The company's business offices, or the personal residence of the owner, is located within a City of Tacoma
26 designated Renewal Community/Community Empowerment Zone, prior to designation as a SBE, or

a. The company's business offices, or the personal residence of the owner, is located within the City of
Tacoma for at least six months prior to designation as a SBE; or

c. The company's business offices are located in a federally designated HUBZONE in Pierce County or any
adjacent county for at least 12 months prior to designation as a SBE; or

d. The company's business offices are located in a federally designated HUBZONE in a County wherein the
work will be performed, or an adjacent county, for at least 12 months prior to designation as a SBE.

B. Application Process. The SBE Program Coordinator shall make the initial determination regarding
certification or recertification. Each SBE applicant shall provide the following documents; as such documents
are more fully described in the SBE Regulations, to the SBE Program Coordinator:

1. A completed Statement of Personal Net Worth form;

2. A completed, ~~Declaration of SBE Status Affidavit form~~ signed, and notarized Affidavit of Small Business
Enterprise Certification that affirms compliance with the certification and documentation requirements of this
section;

3. ~~Tax returns for the business for six (6) years prior to the date of application for SBE certification, or from
the date of inception of the business if the business has been in existence less than six (6) years;~~

4. ~~List of equipment and vehicles used by the SBE;~~

5. ~~Description of company structure and owners;~~

6. ~~Such additional information as the SBE Program Coordinator or designee may require.~~



When another governmental entity has an equivalent SBE classification process the City may enter into an interlocal cooperative agreement for mutual recognition of certifications.

1 C. Recertification. A SBE qualified business shall demonstrate annually to the satisfaction of the SBE
2 Program Coordinator that the following SBE qualifications are still in effect for such business:

- 3 1. That the company still meets all of the criteria set forth in subsection 1.07.050.A. TMC, and
- 4 2. That the company has maintained all applicable and necessary licenses in the intervening period, and
- 5 3. That the company demonstrates that the owner and/or designated employees have completed the minimum
6 annual continuing business education training requirements set forth in the SBE Regulations.

7 D. Appeals. The applicant may appeal any certification determination by the SBE Program Coordinator under
8 this chapter to the Director. The appeal must be made in writing and must set forth the specific reasons for the
9 appeal. The Director shall make a decision on the appeal request within a reasonable time, which decision
10 shall be final unless further appeal is made to the Hearing Examiner. In that event, the Hearing Examiner
11 Rules of Procedure for Hearings, Chapter 1.23 TMC, shall be applicable to that appeal proceeding.

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13 **1.07.140 Sunset and review of program.**

14 This chapter shall be in effect through and until December 31, ~~2014~~2019, unless the City Council shall
15 determine at an earlier date that the requirements of this chapter are no longer necessary. If this chapter has
16 not been repealed by July 1, ~~2014~~2019, the City Council shall determine by the end of that year whether
17 substantial effects or lack of opportunity of SBEs remain true in the relevant market and whether, and for how
18 long, some or all of the requirements of this chapter should remain in effect.
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